**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 7956 of 2006**
**With**
**SPECIAL CIVIL APPLICATION No. 7957 of 2006**
**To**
**SPECIAL CIVIL APPLICATION No. 7969 of 2006**

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**For Approval and Signature:**

**HONOURABLE MR.JUSTICE H.K.RATHOD**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**SHIHOR NAGAR PALIKA THROUGH CHIEF OFFICER, - Petitioner(s)**
**Versus**
**NATVARLAL MAGANLAL TRIVEDI - Respondent(s)**

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**Appearance :**
MR RM CHHAYA for Petitioner(s) : 1,
MS MAMTA R VYAS for Respondent(s) : 1,

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**CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD**

**Date : 21/07/2006**

**ORAL JUDGMENT**

1. Rule. Learned advocate Ms. Mamta R. Vyas waives the service of notice of rule on behalf of the respondents. With consent of both the learned advocates appearing on behalf of the respective

parties, this group of petitions are taken up for final hearing today.

2. Heard the learned advocate Mr. R.M. Chhaya appearing on behalf of the petitioner and learned advocate Ms. Mamta R. Vyas appearing on behalf of the respondents.

3. In this group of petitions, Labour Court, Bhavnagar has passed common award in all references, which are in 14 on 31st January 2006. The Labour Court has granted reinstatement of all the 14 workmen with continuity of service and with 40% back wages of interim period. This Court, at the time of issuing notice, directed petitioner to reinstate the respondent workmen and to pay regular wages to all the respondents in group of petitions with effect from 1st February 2006. Learned advocate Mr. Chhaya submitted that order passed by this Court has been complied by petitioner and each respondent has been taken back in service by the petitioner and at present they are working.

4. Learned advocate Mr. Chhaya submitted that this respondents – workmen were not appointed according to recruitment rules and all they were appointed as a back door entry. He also raised contention that none of the respondents – workmen has completed continue service of 240 days and therefore, Labour Court has committed gross error in coming to the conclusion that workmen had completed 240 days continue service.

He also submitted that Labour Court has also committed an error in granting reinstated with 40% back wages of interim period. He submitted that petitioner being a local authority to provide infrastructural facilities to the citizen of Shihor Town. In order to see that street lights are maintaining properly and if necessary if the street lights do not work, then same were required to be changed from time to time and therefore, a specific work was alloted orally to respondent workmen for the purpose of maintaining the street lights, in which, the respondent used to work whenever it was necessary. He also submitted that such type of work was not of permanent in nature and it was also known to the respondent. Therefore, according to him, none of the respondent was appointed by the petitioner after following the procedure of rules and it was not a permanent nature of work which required to be performed by the respondent.

5. Learned advocate Ms. Mamta Vyas submitted that Labour Court, Bhavnagar has rightly granted the benefits in its award. She submitted that the respondent workmen were working in a different post viz., electrical supervisor, driver, daily wagers and key-man from 1995, 1996 and 1997 onwards. They were receiving the daily wage from the petitioner and their services were terminated in the year of 1995 and 1999 on different dates. She also submitted that work of driver was also taken by the petitioners from the respondent – workmen. She also submitted that

before the Labour Court, the respondents have given deposition and she ultimately pointed out that before the Labour Court, a specific statement was made by the petitioner that if the workmen are prepared to resume the duty, then petitioner is prepared to reinstate them in service. The petitioner has made clear that on the same terms and conditions, if workmen are prepared to work then Nagar Palika is prepared to reinstate them. Therefore, she submitted that Labour Court has rightly considered this aspect and non-compliance of Section 25-F granted reinstated with continuity of service and with 40% back wages of interim period. She submitted that in respect to five workmen as mentioned in page 32 in discussion of Issue No.3 Page 12, if weekly off, holidays and festivals holidays are included as per the decision of Apex Court in case of ***Workmen of American Express International Banking Corporation v. Management of American Express International Banking Corporation*** reported in ***AIR 1986 SC 458 = 1986 Lab.I.C. 98*** then in respect to five workmen, they are also entitled for the benefit of Section 25-F of the Industrial Disputes Act, 1947. She also submitted that petitioner has not disputed the working days of the respondents as discussed by the Labour Court at Page 34, Para 40, because, workmen have produced the pay slip of each month which has not been disputed by the petitioner. She submitted that pay slip of some of the months were not produced by the workmen then it is a burden upon the employer to prove that for that period, the workmen were not working with the

petitioner. She also submitted that workmen remained without job during the interim period and Labour Court has rightly considered the length of service, age, qualification and nature of work granted 40% back wages of interim period. For that, according to her submission, Labour Court has not committed any error while passing such award.

6. I have considered the submissions made by both the learned advocates appearing for the respective parties and I have perused the entire award passed by the Labour Court. The Labour Court, Bhavnagar has comprehensively examined the issue on basis of the documents and oral evidence of respective parties. The Labour Court has given details in respect to each reference and each respondents were examined before the Labour Court. On behalf of the petitioner, Chief Officer of Shihor Nagar Palika was examined vide Exh.60 in Reference No.424 of 1999. According to the evidence of Chief Officer, this respondents were daily wagers and they were appointed / accommodated by elected representatives of Nagar Palika without following the due process of recruitment rules. The Chief Officer has also deposed that each respondent has worked with break and no continuity of service were performed by any of respondent workmen. There is no set up available with Nagar Palika and therefore, not possible to reinstate any respondent workmen.

7. The Labour Court has framed the issued in Para 6 after considering the pleadings of the party on

record. The relevant Issue No.3 is whether petitioner has violated Section 25-F of the Industrial Disputes Act, 1947 or not and Issue No.6 is whether respondent workmen are entitled the reinstatement with full back wages and with continuity of service or not. The Labour Court has, thus, framed issues and reasons have been given in para 9. The workmen were prepared to resume the duty and according to the petitioner, they were also ready to reinstate the workmen. This aspect has been considered by the Labour Court. After discussing the chief examination and cross examination and documents, the Labour Court has scrutinised in Para 12 of the award the working days of 240 days whether completed by the respondents or not ? Which are as under :

| Sr.No. | Name of the Workman | Working Days |
|---|---|---|
| 1. | Natvarlal Maganlal Trivedi | 361 |
| 2. | Bipin Jayantilal | 222 |
| 3. | Sajanbhai Jivanbhai | 201 |
| 4. | Manchharam Parsottamdas | 249 |
| 5. | Panchiben Shibabhai | 352 |
| 6. | Jinabhai Amubhai | 355 |
| 7. | Kesarben Dahyabhai | 138 |
| 8. | Vikrambhai Ukabhai | 195 |
| 9. | Shivubha Jilubha | 224 |
| 10. | Bharat Ramnik | 251 |
| 11. | Dharmendra Dilip | 334 |
| 12. | Kashiram Charandas | 287 |
| 13. | Ashok Parsottamdas | 184 |
| 14. | Ibrahim Balabhai | 360 |

8. After scrutinising the working days of each

workmen, the Labour Court has discussed that workmen have produced relevant documents for a period of 12 months preceding the date of termination but no further documents or remaining documents produced by the petitioner before the Labour Court. The Labour Court has come to the conclusion that oral evidence of the workmen has not been challenged by the petitioner in cross-examination then it is the burden upon the employer to prove that workman has not completed 240 days continuous service. The petitioner has not produced muster roll or pay register before the Labour Court. The Labour Court has relied upon the decision of Apex Court reported in ***2005(2) C.L.R. 279***. Therefore, on the basis of this discussion, ultimately, Labour Court has come to the conclusion that it is proved by the workmen that they have completed 240 days continuous service preceding 12 months from the date of termination. It is not in dispute between the parties that at the time of termination, Section 25-F of the Industrial Disputes Act, 1947 has not been complied. It is not the case of the petitioner also that Section 25-F has been followed by them. Therefore, Labour Court has come to the conclusion that Section 25-F has been violated by the petitioner, therefore, workmen are entitled for reinstatement.

9. In respect to Section 25-G, Labour Court has come to the conclusion that it is not proved by the workmen but in respect of Section 25-H that has been proved by the workmen and petitioner has violated

Section 25-H independently and therefore, workmen are entitled the benefit of reinstatement. The Labour Court has considered the contention raised by the petitioner that they were appointed without following due process of recruitment rules and no set up in the Nagar Palika, therefore, they should not have been reinstated in service. This contention has been negatived by the Labour Court that now, at this stage, considering the admission of petitioner in written statement that if the workmen are prepared to come on duty on the same terms and conditions, the petitioner is prepared to reinstate them on service on the same terms and conditions. This aspect has been taken into account by the Labour Court and ultimately, Labour Court has granted reinstatement in service. The gainfully employment is not proved by the petitioner before the Labour Court and Labour Court has considered length of service, age, qualification and nature of work granted 40% back wages of interim period.

10. I have considered the reasonings given by the Labour Court as well as submissions made by both the learned advocates appearing on behalf of the respective parties. On three grounds, the termination has been rightly set aside by the Labour Court.

(i)In written statement, petitioner has made clear statement that if the workmen are prepared to work on the same terms and conditions, petitioner is prepared to reinstate them on job

in same terms and conditions. Therefore, petitioner was prepared to reinstate the workmen when dispute was raised by the workmen against the termination;

(ii)Except five workmen, rest of have completed 240 days continuous service and same has been proved before the Labour Court. In respect to five workmen, those who were not able to prove 240 days continue service, the record which was produced by the workmen was only for a period of twelve months preceding twelve months from the date of termination, but rest of the record was not produced by the petitioner. In respect to five workmen, those who have not completed 240 days, the decision of Apex Court in case of ***Workmen of American Express International Banking Corporation v. Management of American Express International Banking Corporation*** reported in ***AIR 1986 SC 458 = 1986 Lab.I.C. 98*** is required to be taken into account and if calculating the weekly off, public holidays and festival holidays for a period of twelve months which covered to complete 240 days.

(iii) There is a clear finding given by the Labour Court in Para 14 that petitioner has violated Section 25-H of the Industrial Disputes Act, 1947. In violation of mandatory provisions of Section 25-H is also give right to the workmen of reinstatement. This being an independent

right has been given to the workmen. Irrespective of the fact that whether workmen had completed 240 days service or not? Therefore, on these three counts, Labour Court has rightly granted reinstatement with continuity of service.

11. In respect to the question of back wages, the Labour Court has granted 40% of interim period. The termination of service 1999 except in one case 1995. The dispute raised which referred for adjudication in the year of 1999 and 2000. These all group of references remained pending before the Labour Court up to 31st January 2006 means more than seven years. The proceedings pending and delayed before the Labour Court either party is not in fault. In such circumstances and considering the fact that five workmen were not completed 240 days continue service and same was not proved before the Labour Court and also length of service about one year of each respondent and daily wager skilled employee performing a technical work of driver and electrician. Therefore, such employees those who are performing technical work / skilled work cannot be presumed that they remained without work for entire period. The financial condition of Nagar Palika is not good. Learned advocate Mr. Chhaya submitted the electricity is also disconnected by Gujarat Electricity Board because of not able to make the payment of electricity charges. Learned advocate Mr. Chhaya also pointed out that grant received from the

Government which directly paid to the workmen for salary and therefore, due to abolition of octroi, petitioner was not able to maintain the affairs of the Nagar Palika properly. He also submitted that if 40% back wages which has been awarded by the Labour Court if it is calculated for 14 workmen for this large period, it comes to more than Rs.11 lakhs. Therefore, petitioner is not able to pay this much amounts for payment of back wages. Recently, the Apex Court has considered the question of back wages when termination is set aside by the Labour Court. The Apex Court has observed that granting of reinstatement and granting of back wages, both are different and independent things, merely, termination order is set aside, it is not an ordinary, natural and normal consequences to grant full back wages of interim period.

12. The Apex Court has recently decided this issue in the following three cases :

(i) The law on this question recently examined by the Apex Court in case of ***Municipal Council, Sujanpur Vs. Surinder Kumar reported in 2006 (5) Scale 505.*** The relevant discussion is in Para.13, 15 and 16 which are quoted as under :

“13. Equally well settled is the principle that the burden of proof,

having regard to the principles analogus to Section 106 of the Evidence Act that he was not gainfully employed, was on the workman. (See : Manager, Reserve Bank of India, Bangalore v. S. Mani & Ors. (2005) 5 SCC 100).

15. Apart from the aforementioned error of law, in our considered opinion, the Labour Court and consequently the High Court completely misdirected themselves insofar as they failed to take into consideration that relief to be granted in terms of Section 11A of the said Act being discretionary in nature, a Labour Court was required to consider the facts of each case therefor. Only because relief by way of reinstatement with full back wages would be lawful, it would not mean that the same would be granted automatically.

16. For the said purpose, the nature of the appointment, the purpose for which such appointment had been made, the duration / tenure of work, the question whether the post was a sanctioned one, being relevant facts, must be taken into consideration.

(ii) Recently, the Apex Court has also considered similar question in case of ***Haryana State Electronics Development Corporation Ltd. Vs. Mamni reported in 2005 AIR SCW 2979,*** wherein, another recent decision in case of UP State Brassware Corporation Ltd. Vs. U.N.Pandey reported in JT 2005 (10) SC 344. The Apex Court has observed in Para.15 and 17 as under :

> “15. This Court in a number of decisions has categorically held that the relief of reinstatement with full back wages is not to be given automatically. Each case must be considered on its own merits.
>
> 17. It was further opined :
> 'Industrial Courts while adjudicating on disputes between the management and the workmen, therefore, must take such decisions which would be in consonance with the purpose the law seeks to achieve. When justice is the buzzword in the matter of adjudication under the Industrial Disputes Act, it would be wholly improper on the part of the superior courts to make them apply the

cold letter of the statutes to act mechanically. Rendition of justice would bring withing its purview giving a person what is due to him and not what can be given to him in law.

A person is not entitled to get something only because it would be lawful to do so. If that principle is applied, the functions of an industrial court shall lose much of its significance.

The changes brought about by the subsequent decision of this Court probably having regard to the changes in the policy-decisions of the government in the wake of prevailing market economy, globalization, privatization and outsourcing is evident.'

(iii) Recently, again this question has been examined by the Apex Court in ***UPSRTC Ltd. Vs. Sarada Prasad Misra & Anr. Reported 2006 SCC (L&S) 857,*** wherein, the Apex Court has observed that right to claim full back wages when to be granted. Held, no precise formula can be adopted nor “cast-iron rule” can be laid down in this regard. Payment of back wages is a

discretionary power which has to be exercised keeping in view the facts and circumstances of each case. The approach of the Court / Tribunal should not be rigid or mechanical but flexible or realistic. In cases where the employee is entitled to reinstatement, the question regarding payment of back wages would be independent of the question as to entitlement to reinstatement. While considering and determining the question regarding payment of back wages, the Court / Tribunal would consider all relevant circumstances referred to herein and pass an appropriate order keeping in view the principles of justice, equity and good conscience. Relevant discussion in Para.13 to 16 which are quoted as under :

> “13. But even otherwise, the award passed by the Labour Court as also the order of the High Court granting back wages deserves interference. In several cases, this Court has held that payment of back wages is a discretionary power which has to be exercised keeping in view the facts and circumstances of each case and neither straitjacket formula can be evolved, nor a rule of universal

application can be adopted (vide PGI of Medical Education & Research v. Raj Kumar; Hindustan Motors Ltd. v. Tapan Kumar Bnhattacharya). In Kendriya Vidyalaya Sangathan v. S.C.Sharma this Court held that when question of determination of entitlement of back wages comes up for consideration, prima facie, it is for the employee to prove that he had not been gainfully employed. Initial burden is on the employee to show that he remained without any employment. In several cases, similar view has been taken by this Court in recent years. In MP SEB v. Jarina bee, it was observed that reinstatement in service and payment of back wages are two different things and payment of back wages is not a natural consequence of setting aside and order of dismissal. In Allahabad Jal Sansthan v. Daya Shankar Rai, it was indicated that the law is not in absolute terms that in all cases of illegal termination of services, a workman must be paid full back wages. In Haryana State Coop. Land Development Bank v. Neelam it was stated that the aim and object of the Industrial Disputes Act is to impart social justice

to the workman but keeping in view his conduct. Payment of back wages, therefore, would not be automatic on entitlement of the relief of reinstatement. In G.M., Haryana Roadways v. Rudhan Singh the Court reiterated that there is no rule of thumb that in each and every case, where the Industrial Tribunal records a finding that the order of termination of service was illegal that an employee is entitled to full back wages. A host of factors which are relevant, must be taken into account.

14. The Court stated:(SCC p.596,Para 8)

'8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. Whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely, whether ad hoc,

short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him be may not be in a position to get another employment. However, where the total length o service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration, is the nature of employment. A regular service of permanent character cannot be

compared to short or intermittent daily-wage employment though it may be for 240 days in a calendar year.'

15. In Allahabad Jal Sansthan v. Daya Shankar Rai after considering the relevant cases on the point, the Court stated (SCC p.130, para 16)

'16. We have referred to certain decisions of this Court to highlight that earlier in the event of an order of dismissal being set aside, reinstatement with full back wages was the usual result. But now with the passage of time, it has come to be realised that industry is being compelled to pay the workman for a period during which he apparently contributed little or nothing at all, for a period that was spent unproductively, while the workman is being compelled to go back to a situation which prevailed many years ago when he was dismissed. It is necessary for us to develop a pragmatic approach to problems dogging industrial relations. However, no just solution can be offered but the golden mean may be

arrived at.'

13. In light of the observations made by the Apex Court and considering the financial crises suffered by Nagar Palika and workmen are already reinstated in service and duration of about seven years of interim period, according to my opinion, in respect of granting 40% back wages which is otherwise, harsh in a higher side looking to the facts and circumstances of the case, instead of that, if some lump-sum amount is directed to petitioner to be paid to respondents – workmen which would meet the end of justice between the parties. Therefore, while confirming the order of reinstatement with continuity of service, I reduce the amount of back wages from 40% to Rs.40,000/- in respect to workmen those who have completed 240 days continuous service on record and in respect of five workmen those who have not completed 240 days continue service without getting the benefit of breach of Section 25-F, for them, Rs.30,000/- to be paid by the petitioner being an interim period. The five workmen those who are entitled for Rs.30,000/- are as under :

(i)Bipin Jayantilal
(ii)Sajanbhai Jivanbhai
(iii)Kesharben Dahyabhai

(iv)Vikram Ukabhai

(v)Shivubha Jilubha

14. Except that, rest of the workmen are entitled to Rs.40,000/- being back wages of interim period.

15. The contentions raised by the petitioner that workmen has been recruited *dehors* the rules and without following the recruitment rules. Therefore, they are not entitled the benefit of Section 25-F of Industrial Disputes Act, 1947.

16. This aspect has been examined by the Apex Court in reported decision in case of **Vikramaditya Pandey v. Industrial Tribunal and Another** reported in ***2001 AIR SCW 310.*** The relevant para 6 is quoted as under :

> ***"Para 6 : We have carefully considered the respective contentions made on behalf of the parties. It is not in dispute that the Award passed by the Tribunal was not challenged by the Bank. The Tribunal as well as the High Court have concurrently found that the case of the appellant was one of retrenchment and that the appellant was working between the period 4-12-1981 to 19-7-1985 with small motivated breaks and that in any case he worked for more than 240 days in a year***

***before termination of services. The Tribunal in para 5 of its Award has stated thus:-***

***"It is however evident that he worked for much more than 240 days in an year before his service ceased. It is also clear that breaks were given and ad hoc appointment made every time for 90 days or less. This was evidently done to stick to the letter of the law regarding the authority of the bank in regard to making appointments only for limited periods in ad hoc or temporary arrangement, as specified in the service Regulations, 1975. It is however, clear that services of the workman were needed as the work was available but a continuing temporary appointment was not made even though under Regulation 5(iii) of the Service Regulations such longer term stop-gap appointment (and not only for 90 days) can be made with prior approval of the competent authority (the Board). It would thus, appear that attempt was made confirm to the letter of law and not its spirit in so far as provisions regarding retrenchment under the Industrial Disputes Act go."***

***The only issue before the High Court was whether the appellant was entitled to reinstatement in service with back wages, once the termination of his services had been***

***held to be illegal and moreso when the same was not challenged. Ordinarily, once the termination of service of an employee is held to be wrongful or illegal the normal relief of reinstatement with full back wages shall be available to an employee; it is open to the employer to specifically plead and establish that there were special circumstances which warranted either non-reinstatement or non-payment of back wages. In this case we do not find any such pleading of special circumstances either before the Tribunal or before the High Court. Since Regulation 103 of the Regulations is referred to in the order of the Tribunal as well as in the High Court and it has bearing in deciding the controversy, the focus is needed on it. It reads:-***

***"103. The provisions of these regulations to the extent of their inconsistency with any of the provisions of the Industrial Disputes Act, 1947, U.P. Dookan Aur Vanijya Adhishthan Adhiniyam, 1962, Workmen's Compensation Act, 1923 and any other Labour Laws for the time being in force, if applicable to any Co-operative Society or class of co-operative societies, shall be deemed to be inoperative."***

***By plain reading of the said Regulation it is clear that in case of inconsistency between***

***the Regulations and the provisions of the Industrial Disputes Act, 1947, the State Act, the Workmen's Compensation Act, 1923 and any other labour laws for the time being in force, if applicable to any co-operative society or class of co-operative societies, to that extent Regulations shall be deemed to be inoperative. In other words, the inconsistent provisions contained in the Regulations shall be inoperative, not the provisions of the other statutes mentioned in the Regulation 103. The Tribunal in this regard correctly understood the Regulation but wrongly refused the relief on the ground that no reinstatement can be ordered on a regular employment in view of the provisions contained in the said Regulation. But the High Court read the Regulation otherwise and plainly misunderstood it in saying that if there is any inconsistency between the Regulations and the Industrial Disputes Act, 1947 and other labour laws for the time being in force the Regulations will prevail and the Industrial Disputes Act, 1947 and other labour laws shall be deemed to be inoperative. This misreading and wrong approach of the High Court resulted in wrong conclusion. In the view it took as to Regulation 103 the High Court proceeded to State that even if there was retrenchment in view of Regulation 5 of the Regulations the***

***Labour Court was not competent to direct reinstatement of the appellant who was not recruited in terms of Regulation 5 because the Labour Court had to act within the ambit of law having regard to the Regulations by which the workman was governed. In this view the High Court declined relief to the appellant which in our view cannot be sustained. The Tribunal felt difficulty in ordering reinstatement as the appellant was not a regular employee. The appellant ought to have been ordered to be reinstated in service once it was found that his services were illegally terminated in the post he was holding including its nature. Thus in our opinion both the Tribunal as well as the High Court were not right and justified on facts and in law in refusing the relief of reinstatement of the appellant in service with back wages. But, however, having regard to the facts and circumstances of the case and taking note of the fact that the order of termination dates back to 19-7-1985 we think it just and appropriate in the interest of justice to grant back wages only to the extent of 50%.“***

*17.* Recently, the Apex Court has observed in case of ***Nagar Maha Palika (Now Municipal Corporation v. State of UP & Ors.,*** reported in ***2006 AIR SCW 2497,*** as under:

> “The termination was in violation of S.6 N. The respondent cannot be said to have been appointed on temporary basis pursuant to the said GO dated 19.12.1985 or such appointments cannot be said to be were made for a fixed tenure within the meaning of the provisions of sub-cl. (bb) of cl. (oo) of section 2. But the appointment of respondents have been made in violation of the provisions of the Adhiniyam. An appointment made in violation of the provisions of Adhiniyam is void. The same however although would not mean that the provisions of the Industrial Disputes Act are not required to be taken into consideration for the purpose of determination of the question as to whether the termination of workmen from service is legal or not but the same should have to be considered to be an important factor in the matter of grant of relief.“

18. The Apex Court has observed that appointments made by authority in violation of Act and Rules governing such appointment is void. Though same would not mean that provisions of Industrial Disputes Act, 1947 were not required to be taken into consideration for determination of question whether termination is legal or not but same should have to be considered to be an important

factor in the mater of grant of relief.

19. Accordingly, the award passed by the Labour Court, Bhavnagar in Reference (L.C.B.) No.424 of 1999, dated 31.01.2006 is hereby modified to the effect that petitioner shall have to reinstate with continuity of service is confirmed and except five workmen, rest of the workmen are entitled for Rs.40,000/- as back wages of interim period and five workmen whose names are referred above are entitled for Rs.30,000/- from the petitioner as back wages of interim period.

20. It is directed to the petitioner to pay the amount of back wages as directed by this Court to each respondents – workmen within a period of two months by way of two installments.

21. Accordingly, rule is made absolute to the aforesaid extent. Interim relief, if any, stands vacated.

[H.K. RATHOD, J.]

#Dave